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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,041	08/07/2003	Frederick V. Gabriel	D-25	9968
21253	7590	12/30/2005	EXAMINER	
CHARLES G. CALL 68 HORSE POND ROAD WEST YARMOUTH, MA 02673-2516			GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER

3727

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/636,041

Applicant(s)

GABRIEL ET AL.

Examiner

Harry A. Grosso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 9-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, drawn to an candle carrier, classified in class 220, subclass 737.
 - II. Claims 9-11, drawn to a method of using the candle carrier, classified in class 29, subclass 428.

2. Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the candle carrier can be used to hold loose change.

3. During a telephone conversation with Mr. Charles Call on December 19, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9 and 10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

4. The disclosure is objected to because of the following informalities: in paragraph [001] the filing date of the application 60/401,929 appears to be incorrect.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Chambers (611,560).

7. Regarding claim 1, Chambers discloses a candle carrier (b, Figures 4 and 5, page 1, lines 34-41) with a handle (c) which would be capable of holding a tea light.

8. Regarding claim 2, Chambers discloses the candle carrier is made from tin-plate.

9. Regarding claim 5, Chambers discloses the candle carrier has sides to retain the candle against lateral movement (Figure 5).

10. Regarding claim 6, Chambers discloses a scent burner with a housing (a, e) having a sidewall and an opening (f, Figure 1, page 1, lines 34-41 and lines 47-51) and a candle carrier (b) with a handle (c).

11. Claims 1 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Robinson, Jr. (2002/0068252 A1, June 6, 2002).

12. Regarding claim 1, Robinson, Jr. discloses a candle carrier (18, Figure 1, paragraph 0063) capable of carrying a tea candle, with a handle.

13. Regarding claim 5, Robinson, Jr. discloses the candle carrier has sides to retain the candle against lateral movement (Figure 1).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers in view of Jeneral (6,241,513). Chambers discloses the candle holder of claim 4 with a planar circular bottom (Figure 3) but does not teach the diameter of the holder. Jeneral discloses the use of tea candles for various functions and further discloses the diameter of the tea candles is 1.5 inches. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a candle carrier with a diameter slightly larger than 1.5 inches to hold a tea light in place in the carrier.

16. Claims 2, 3 and 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson, Jr. in view of Jeneral.

17. Regarding claims 2 and 3, Robinson discloses the candle carrier but does not teach is made of a non-flammable material. Jeneral discloses candle carriers for tea candles are typically made of ceramic material (column 1, lines 15-18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of ceramic material for the candle carrier as disclosed by

Jeneral in the carrier disclosed by Robinson, Jr. to provide a non-flammable candle carrier made from a material known in the art.

18. Regarding claim 4, Robinson, Jr. discloses the candle holder with a planar circular bottom (Figure 1) but does not teach the diameter of the holder. Jeneral discloses the use of tea candles for various functions and further discloses the diameter of the tea candles is 1.5 inches. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a candle carrier with a diameter slightly larger than 1.5 inches to hold a tea light in place in the carrier.

19. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers in view of Ratia et al (Des. 357,084). Chambers discloses the invention of claim 7 except for the handle as a flange-shaped member with vertically oriented surfaces. Ratia et al discloses a candle carrier with a flange-shaped handle having vertically oriented surfaces. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the flange shaped handle with vertically oriented surfaces as disclosed by Ratia et al in the candle carrier disclosed by Chambers to make it easier to grasp the candle carrier when it is inside the scent burner.

20. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers and Ratia et al as applied to claim 7 in view of Fullam (5,827,483) and Farce (Des. 430,658). The invention of claim 7 is disclosed except for the use of a ceramic housing. Farce disclosed a one piece scent burner with a housing and an opening for

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inserting the candle carrier (Figure 1). Fullam discloses a scent burner in which the housing holding the scent oil is ceramic (column 6, lines 26-31). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a one piece housing as disclosed by Farce made of ceramic material as disclosed by Fullam in the scent burner of claim 7 to provide a one piece housing that would be visually appealing using ceramic material which is known to be used with scent oils.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nathan Newhouse
Supervisory Patent Examiner
Art Unit 3727

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